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**SOCIAL AND HUMAN RIGHTS QUESTIONS
HUMAN RIGHTS**

Note by the secretariat

1. In its resolution 2002/19, the Sub-Commission on the Promotion and Protection of Human Rights invited Mr Miguel Alfonso Martinez, Special Rapporteur of the Sub-Commission on the study on treaties, agreements and constructive arrangements between States and indigenous populations, to prepare a short working paper identifying the themes and possible outputs of a seminar on treaties for possible consideration by the Commission on Human Rights at its fifty-ninth session.
2. For several reasons, it was not possible for the Special Rapporteur to submit the requested short working paper to the Commission at its fifty-ninth session. Notwithstanding, on 25 April 2003, the Commission adopted decision 2003/117 in which it decided to recommend to the Economic and Social Council that it request the United Nations High Commissioner for Human Rights to organize, before the end of the International Decade of the World's Indigenous People, a seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples to explore possible ways and means to follow up on the recommendations included in the final report of the Special Rapporteur (E/CN.4/Sub.2/1999/20).
3. Information in relation to the seminar provided by the Special Rapporteur is contained in the annex to the present document.

Annex

**WORKING PAPER PREPARED BY THE SPECIAL RAPPORTEUR OF THE
THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS ON THE STUDY ON TREATIES, AGREEMENTS
AND CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND
INDIGENOUS POPULATIONS^a**

1. The Special Rapporteur welcomes the opportunity to provide the Economic and Social Council with suggestions in connection with the proposed seminar on treaties, agreements and constructive arrangements between States and indigenous peoples. In his final report on the study (E/CN.4/Sub.2/1999/20), submitted to the Sub-Commission in 1999, he made a number of recommendations for follow-up.
2. In paragraphs 315 and 316, he recommended that a United Nations-sponsored workshop be convened to open an educated discussion on the possible merits and demerits of the establishment of an international body to adjudicate or advise on disputes between indigenous peoples living within the borders of a modern State and non-indigenous institutions, including State institutions. It should be recalled that the Special Rapporteur stressed the importance of States' establishing effective national mechanisms for conflict resolution on indigenous issues and noted that, should this be the case, the need for any such international mechanism would be diminished or non-existent.
3. He also made a number of other recommendations in his final report that it may be worth recalling in the light of the discussion envisaged by the Commission relating to the seminar on the treaty study. In paragraph 322, the Special Rapporteur proposed the establishment of a section within the United Nations Treaty Registry with the responsibility for locating, compiling, registering, numbering and publishing all treaties concluded between indigenous peoples and States. He also suggested two additional themes for workshops: on modalities for redressing the effects of the historical process of land dispossession suffered by indigenous peoples; and the implementation/observance of indigenous treaty rights.
4. The Special Rapporteur also recommended that discussion be promoted around the idea of an advisory body that could serve as an impartial facilitator in cases of disputes on treaty-related matters involving indigenous peoples and States. This, as was stated in his report, would provide advice in situations where no suitable national mechanisms existed.
5. At the time he concluded the final report, the Special Rapporteur suggested that the Permanent Forum on Indigenous Issues, then under consideration by the Commission, might serve as such a body. The Economic and Social Council has, however, now mandated the Permanent Forum to provide advice to the United Nations system, through the Council, and the new body has not been mandated to exercise any advisory role vis-à-vis States.

^a To allow time for consultation, the Special Rapporteur submitted his report after the deadline established by the Documents Management Section.

6. The Special Rapporteur wishes to underline that in proposing an open discussion on such an advisory body, he is thinking of a mechanism that would help States and indigenous peoples reach agreement. Hence the proposal that the United Nations create a repository of relevant treaties, agreements and other constructive arrangements, including contemporary agreements, that would be available as a database and provide, in certain cases, examples of good practice resulting in the effective promotion, materialization and protection of indigenous rights.

7. The Sub-Commission invited the Special Rapporteur to identify the themes and outputs of a seminar on treaties and he would propose the following four areas for discussion:

(a) Exploring the possibility of undertaking (by another member of the Working Group on Indigenous Populations) of a new study on the issue of treaty-based relations between States and indigenous peoples. This new study could be based on new available information provided by governmental and indigenous experts on current treaty-making practices and focused on the analysis of the actual present-day utility of such treaties/agreements for the promotion and protection of the human rights of indigenous peoples, as well as on possible ways and means of securing effective participation by indigenous representatives in the treaty-making process and in the implementation of the instruments agreed to in such a process;

(b) Full consideration of possible confidence-building steps to be taken by both indigenous and non-indigenous interested parties facing situations of potential or actual conflict between those two segments of the population in "multiple" societies;

(c) A review on ways and means of achieving the eventual implementation of other recommendations contained in the final report, including the proposal to establish an advisory body and a United Nations repository for indigenous/State treaties; and

(d) Preliminary consideration of other activities that may contribute to establishing harmonious relations between indigenous peoples and States through effective mechanisms for the implementation of the historical and present-day treaty rights of indigenous peoples, as well as of their other rights - including their human rights - recognized in applicable international standards and/or legally binding instruments, as well as in national legislation.



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Social and human rights questions: advancement of women

**Letter dated 20 June 2003 from the Permanent Representative of
Spain to the United Nations addressed to the President of the
Economic and Social Council**

I have the honour to transmit to you herewith the main points which the Working Group on the Future Operation of the International Research and Training Institute for the Advancement of Women (INSTRAW) believes should be taken into account in the amendment of the statute of INSTRAW, which will take place during the next session of the Economic and Social Council, to be held in Geneva in July 2003, under item 14 (a) of the provisional agenda (see annex).

I should also be grateful if appropriate steps could be taken to have this note, which I am submitting on behalf of the Working Group, translated into the six official languages of the United Nations and circulated as a document of the United Nations in the meetings of the Council.

(Signed) Inocencio F. Arias

* E/2003/100.



Annex to the letter dated 20 June 2003 from the Permanent Representative of Spain to the United Nations addressed to the President of the Economic and Social Council

Recommendations of the Working Group on the Future Operation of the International Research and Training Institute for the Advancement of Women

Note by the Chairman of the Working Group*

I. Background

1. The Working Group on the Future Operation of the International Research and Training Institute for the Advancement of Women (INSTRAW) was established by the General Assembly pursuant to its resolution 56/125 of 19 December 2001 and is composed of 11 members: Bangladesh, Burkina Faso, the Czech Republic, the Dominican Republic (host country), El Salvador, the United States of America, Mongolia, Slovakia, Spain, Uganda and Venezuela.
2. In compliance with its mandate, the Working Group on the Future Operation of INSTRAW presented a report to the General Assembly during its fifty-seventh session, containing a series of recommendations aiming at revitalizing and strengthening the Working Group (see A/57/330), which were endorsed by the Assembly in its resolution 57/175 of 18 December 2002.
3. Furthermore, the General Assembly decided to extend the mandate of the Working Group for the follow-up of the implementation of the measures referred to in paragraph 2 of its resolution 57/175 in close consultation with the Secretary-General (para. 3); and to submit a preliminary report to the Commission on the Status of Women, during its forty-seventh session, as well as a final report on the matter to the General Assembly during its fifty-eighth session (para. 8).
4. In compliance with its mandate, the Working Group presented a preliminary report to the Commission on the Status of Women during its forty-seventh session (A/AC.266/1). In that report, the Working Group pointed out that to enable INSTRAW to fulfil its mandate, the Economic and Social Council should consider amendments of the statute of the International Research and Training Institute for the Advancement of Women.
5. Consequently, the Commission on the Status of Women adopted the draft decision submitted by the Chairperson of the Commission on the basis of informal consultations (E/CN.6/2003/L.7), in which the Commission recommends that the Economic and Social Council review the report of the Working Group (A/57/330 and Add.1) under the appropriate agenda item of its 2003 substantive session.

* In compliance with the mandate of the Working Group on the Future Operation of INSTRAW, the Permanent Representative of Spain to the United Nations, Ambassador Inocencio F. Arias, Chairman of the Working Group, is submitting the present note to the Economic and Social Council.

II. Recommendations of the Working Group

6. In accordance with the report of the Working Group (A/57/330), adopted by the General Assembly in its resolution 57/175, paragraph 57 (a) mandates the Economic and Social Council to amend the statute of INSTRAW as per paragraphs 52, 53 and 55 of the report. These paragraphs refer specifically to the autonomous status of INSTRAW, the Board of Trustees and financing of INSTRAW.

III. Implementing recommendations of the Working Group

7. Having in mind the mandate of the General Assembly contained in resolution 57/175 to modify the statute of INSTRAW during the substantive session of 2003 of the Economic and Social Council, according to paragraphs 52, 53 and 55 of the report of the Working Group (A/57/330), the Working Group on the Future Operation of the International Research and Training Institute for the Advancement of Women proposes that the Economic and Social Council consider and amend the following articles:

(a) Article I (Statute and purposes)

According to the current text of the statute of INSTRAW, this is an autonomous institution within the framework of the United Nations system. The Director shall have overall responsibility for the organization and administration of the Institute in accordance with general directives by the Board of Trustees and within the terms of the authority delegated to the Director by the Secretary-General. The Director shall, *inter alia*, submit the work programmes and the budget estimates of the Institute to the Board for its consideration and adoption.

However, these important functions and responsibilities delegated to the Director by the Secretary-General had been adopted, *de facto*, by the Secretariat of the United Nations through the Special Adviser of the Secretary-General on Gender Issues and the Advancement of Women (see A/57/330, para. 13) and by the Office of the Controller of the United Nations (*ibid.*, para. 28).

In this regard, the Working Group proposes to ensure that the Director really has overall responsibility for the organization and administration of the Institute in accordance with general directives by the new Executive Board that member States will compose as proposed in the following paragraphs.

(b) Article III (Board of Trustees)

According to the current text of the statute of INSTRAW, a Board of Trustees, composed of 11 members nominated by member States and appointed by the Economic and Social Council, governs all its work and activities. The members of the Board serve in their individual capacities for a term of three years from the date of their appointment.

A representative of the Secretary-General, the Director of the Institute, a representative of each of the regional commissions of the Economic and Social Council and a representative of the host country serve as *ex officio* members of the Board.

In this regard, the Working Group proposes the following amendments: (1) to transform the Board of Trustees into the Executive Board and, consequently, change the name of the Board of Trustees to the Executive Board and make this change throughout the whole text of the statute of INSTRAW; (2) the Executive Board shall be composed of 11 member States, in conformity with the principle of equitable geographical distribution, similar to the current composition of the Working Group on the Future Operation of the International Research and Training Institute for the Advancement of Women; (3) the members of the Executive Board shall be elected by the Economic and Social Council and shall serve in their national capacities for a term of three years; (4) the Executive Board shall meet in an annual session, at such time and duration as it determines, at the Headquarters of the United Nations in New York. The Executive Board may hold special sessions in addition to the regular sessions, with the agreement of the Economic and Social Council; (5) the current functions of the Board of Trustees shall be reviewed in light of the new role of the Executive Board, in particular the appointment of the Director of INSTRAW. The Secretary-General shall appoint the Director of INSTRAW from a pool of three candidates proposed by the Executive Board.

(c) Article IV (Director and staff)

According to the current text of the statute of INSTRAW, the Secretary-General of the United Nations shall appoint the Director, after consultation with the Board of Trustees.

In this regard, the Working Group proposes that the Director shall be appointed by the Secretary-General of the United Nations from a pool of three candidates proposed by the Executive Board.

According to the current text of the statute of INSTRAW, the staff of the Institute shall be appointed by the Director on behalf of the Secretary-General and in accordance with the modalities established by the Secretary-General within the staffing table approved by the Board.

In this regard, the Working Group proposes that the staff of the Institute, including a Deputy Director (in line with paragraph 57 (e) of the report of the Working Group (A/57/330)), shall be appointed by the Director on behalf of the Secretary-General and in accordance with the modalities established by the Secretary-General within the category of staff modified as appropriate by the Executive Board.

According to the current text of the statute of INSTRAW, the terms and conditions of service of the Director and the staff shall be those provided in the Staff Regulations and Rules of the United Nations, subject to such arrangements for special rules or terms of appointment as may be approved by the Secretary-General.

In this regard, the Working Group proposes that the terms and conditions of service of the Director and the staff shall be those provided in the Staff Regulations and Rules of the United Nations, subject to such arrangements for special rules or terms of appointment as may be approved by the Secretary-General, and that the decision to retain, confirm or replace the Director shall be adopted by the Secretary-General after consultation and decision of the Executive Board.

According to the current text of the statute of INSTRAW, the Director is the only one who actively seeks appropriate funding for the implementation of the work programme of the Institute.

In this regard, the Working Group proposes that the Director could delegate, including to the Deputy Director, the responsibility actively to seek appropriate funding for the implementation of the work programme of the Institute.

- (d) With regard to paragraph 55 of the report of the Working Group (A/57/330), the Working Group proposes that the Economic and Social Council decide to submit to the General Assembly the debate and any possible decision on this matter, during its fifty-eighth session, before the final report that would be presented by the Working Group on the Future Operation of the International Research and Training Institute for the Advancement of Women, in accordance with General Assembly resolution 57/175.

IV. Conclusion

In accordance with all these recommendations, the Working Group proposed that the Economic and Social Council should adopt a resolution in order to achieve those changes, which would allow the Institute to achieve its mandate properly.
